IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3426 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RACHNA CONSTRUCTION CO. ENGINEERS & CONTRACTORS
Versus
GUJARAT WATER SUPPLY AND SEWERAGE BOARD AND OTHERS

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Appearance :
MR GT DAYANI for the Petitioner
MR MEHUL H RATHOD for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/08/2007

ORAL JUDGMENT

Rule. Mr Mehul Rathod, learned advocate waives service of Rule. At the request of the learned counsel for the parties the matter is taken

up for final hearing today.

The petitioner has challenged the communication addressed by respondent No.3 to respondent No.4 whereby he has requested respondent No.4 to recover a sum of Rs.26 lakhs from the bill of the petitioner in respect of the work executed at Valsad. The said communication is dated 28.12.2006.

It is the say of the petitioner that he was entrusted with the work of construction of water tank at Navsari. It was constructed in accordance with the specifications given by the respondents. It is the further say of the petitioner that on completion of the work and while testing the construction by filling the tank with water, it collapsed. According to the petitioner, the construction was proper but the collapse was only on account of faulty selection of the site for construction. The petitioner has averred that the determination of the soil bearing capacity is the duty of the respondents. It is also averred that respondent No.3 has no power to direct respondent No.4 to recover amount for loss of tank from any outstanding amount due to the petitioner by respondent No.4 for the work carried out at Valsad.

The respondents have contested the petition by filing affidavit-in-reply. It is the say of the respondents that by virtue of the agreement entered into between the parties and in particular, Clause 22 thereof, respondent No.3 is within his bounds to request respondent No.4 to recover the amount from the pending bills of the petitioner equivalent to the loss suffered by respondent No.3.

The petitioner has filed rejoinder and the respondents have filed sur-rejoinder to the same.

I have heard Mr G.T.Dayani for the petitioner and Mr Mehul Rathod for the respondent. It is submitted by Mr Dayani that the work at Navsari and the work at Valsad are totally different assignments. He has submitted that respondent No.3 has no authority or power to call upon respondent No.4 to recover Rs.26 lakhs from the bill which are payable to the petitioner by respondent No.4 in connection with the work carried out at Valsad. He has also submitted that there is no clause in the agreement which authorises respondent No.3 to take such course of action. He has lastly submitted that though this is in a letter form, its effect is, in fact, that of an order passed by respondent No.3 and therefore it is required to be quashed and set aside.

As against that, Mr Mehul Rathod for the respondent has submitted that the petitioner has been executing the work of the respondent – Board at different places and therefore respondent No.3 was authorised to request respondent No.4 to recover the aforesaid amount from the bills pertaining to the work at Valsad. He has placed reliance on Clause 22 of the agreement purported to have been executed by and between the parties.

I have carefully considered the submissions of the learned counsel for the parties and I have also perused the record of this petition. Clause 22, on which extensive reliance has been placed by the respondents, reads as under:-

> "22. GWSSB shall have undisputed and unquestionable power and authority to adjust and recover any amount recoverable from the contractor under any other contract signed and executed by the contractor with the GWSSB, from the money payable to the contractor under this contract."

The clause itself is self-explanatory. It does not empower respondent No.3 to call upon another agency of the Board to recover any amount from the other work for making recovery of the outstanding for the work at Navsari. The clause enables respondent No.3 to effect the recovery from the outstanding bills of the petitioner in respect of the work at Navsari and not at Valsad. In view of the same, I do not see any reason for accepting the submission of the respondent. Respondent No.3 has made a request to respondent No.4 for recovery of Rs.26 lakhs from the bills pertaining to Valsad work. Such direction, instruction or request could not have been made in view of Clause 22 of the agreement referred to above. Hence, that communication has no legal effect. It is therefore required to be quashed. In view of the same, the aforesaid communication, which, according to the petitioner, is an order passed by respondent No.3 is required to be quashed and set aside and it is hereby quashed and set aside. It is, however, made clear that the order of this Court will not come in the way of the respondents in resorting to other legal remedies in respect of their claim vis-a-vis water tank in question. Similarly, if any such remedy is resorted to by the respondents, the petitioner will have equal right to defend his interest. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

(Akshay H Mehta, J.)

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